IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROBERT L. WOODARD,	:	
	:	CIVIL ACTION
v.	:	
	:	NO. 05-1109
DAVID DIGUGLIELMO, et. al.,	:	
	:	

Memorandum and Order

YOHN, J. February ___, 2006

Petitioner Robert Woodard, a prisoner at the State Correctional Institution in Graterford, Pennsylvania, brings this *pro se* Motion for Reconsideration seeking to have the court reconsider its October 4, 2005 Order in which it dismissed his habeas corpus petition. Specifically, Woodard now alleges that this court failed to rule on several of his challenges to the constitutionality of his state court conviction. However, because Woodard did not raise these challenges to his conviction in his original petition, his motion for reconsideration will be denied. Additionally, insofar as Woodard now seeks to have this court consider these constitutional challenges to his conviction as a new habeas action, the court will dismiss his filing as an unauthorized successive habeas petition.

I. Procedural Background

On December 10, 1992, after a jury trial in the Philadelphia Court of Common Pleas, Woodard was convicted of five counts of robbery, four counts of burglary, three counts of possessing an instrument of crime, and one count of rape and sentenced to forty-eight to ninety-

six years imprisonment.[1] He appealed, and the Pennsylvania Superior Court affirmed the judgment and sentence. On July 5, 1994, Woodard filed a petition under Pennsylvania's Post Conviction Relief Act ("PCRA"); on September 9, 1996, the PCRA court denied his petition. He subsequently filed two more PCRA petitions, both of which were dismissed as untimely.

On November 18, 2002, Woodard filed a habeas corpus petition in this court under 28 U.S.C. § 2254. I dismissed the petition as time-bared on July 16, 2003. His request for a certificate of appealability was denied by the Third Circuit on December 12, 2003.

On March 9, 2005, Woodard filed a second petition for habeas corpus; however, he brought this one pursuant to 28 U.S.C. § 2241. In his second petition, Woodard alleged that the state courts committed various errors in their review of his PCRA petitions. On October 4, 2005, I ruled that challenges to the state collateral review process were not cognizable on federal habeas review and dismissed Woodard's petition.

On October 25, 2005, Woodard filed the instant motion for reconsideration. The motion contains four claims: 1) that Philadelphia detectives prior to his trial engaged in a "systematic plan" to "twist several photographic identification procedures in a manner calculated to obtain an identification of the one they suspected"; 2) that he was deprived of his court-appointed counsel for several court-ordered pretrial hearings; 3) that prior to his trial the Commonwealth failed to disclose "vital impeachment evidence"; and 4) that one of his PCRA petitions has been in front of the state courts for ten years without disposition.

II. Discussion

[1] The facts in this section are drawn from Magistrate Judge Diane M. Welsh's May 26, 2005 Report and Recommendation.

Woodard has labeled his filing a "Motion for Reconsideration." However, he also claims to seek relief pursuant to 28 U.S.C. § 2241, which is a habeas corpus provision. Nonetheless, whether considered a motion for reconsideration with reference to his second petition or a third habeas petition, the filing is meritless and must be dismissed.

A. Motion for Reconsideration

Based on the caption of Woodard's filing, it appears that he wishes this court to reconsider its October 4, 2005 opinion concerning his second habeas petition. However, the court will deny Woodard's motion because he reasserts one claim that this court explicitly rejected in its prior decision and attempts to raise three new arguments that were not presented in his prior filing.

"The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence." *Harsco Corp. v. Zlotnicki*, 779 F.2d 906, 909 (3d Cir. 1985). Reconsideration is proper where the moving party demonstrates one of three grounds: "(1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court granted the motion for summary judgment; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice." *Max's Seafood Café ex rel. Lou-Ann, Inc. v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999) (citing *N. River Ins. Co. v. CIGNA Reinsurance Co.*, 52 F.3d 1194, 1218 (3d Cir. 1995)). Motions for reconsideration "may not be used 'as a means to argue new facts or issues that inexcusably were not presented to the court in the matter previously decided.'" *Johnson v. Diamond State Port Corp.*, 50 Fed. Appx. 554, 560 (3d Cir. 2002) (quoting *Brambles USA, Inc. v. Blocker*, 735 F. Supp. 1239, 1240 (D. Del. 1990)); *see also Rock v. Voshell*, 2005 WL 3557841, at *1 (E.D. Pa. Dec. 29, 2005) ("Mere

dissatisfaction with the Court's ruling is not the basis for such a reconsideration, nor can such a motion be used as a means to put forth additional arguments which could have been made but which the party neglected to make.").

Here, Woodard cites no recent precedent or newly discovered evidence that would compel this court to revisit its October 4, 2005 decision. Instead, the thrust of his argument seems to be that this court "overlook[ed] the constitutional facts presented in this case," i.e., his claims that the state employed improper identification techniques, deprived him of counsel, failed to provide him with impeachment evidence, and committed errors in its collateral review of his conviction. However, the court did not do so. First of all, Woodard's argument regarding the state's collateral review of his conviction is identical to the argument that this court considered and rejected in its prior opinion.[2] Thus, the court will not reconsider its decision on this issue.[3] *See Abu-Jamal v. Horn*, 2001 WL 1609761, at *9 (E.D. Pa. Dec.18, 2001) (explaining that "[a] motion for reconsideration is not to be used as a means to reargue matters already argued and disposed of or as an attempt to relitigate a point of disagreement between the Court and the litigant"). Next, Woodard did not present the other three claims in his second habeas petition. These claims were mentioned in Woodard's petition, but only as part of his

[2] As the court explained in its prior opinion, "the federal role in reviewing an application for habeas corpus is limited to evaluating what occurred in the state or federal proceedings that actually led to the petitioner's conviction; what occurred in the petitioner's collateral proceeding does not enter into the habeas calculation." *Hassine v. Zimmerman*, 160 F.3d 941, 954 (3d Cir. 1998) (internal citations omitted).

[3] Woodard also seems to argue that the errors in the state process excuse his failure to exhaust state remedies. However, that is not at issue. The court denied his first habeas petition because it was barred by the federal statute of limitations, and denied his second habeas petition because it failed to present claims cognizable on federal habeas review.

description of his 1994 PCRA petition; he did not ask this court to rule on them. His second habeas petition focused on his complaints regarding his PCRA proceedings, and explained that it sought this court to "formally order [the respondents] to respond to [the amended PCRA motion filed in 1996] without further delay." Indeed, the magistrate judge did not consider his reference to these three claims in her Report and Recommendation. While Woodard objected to her Report and Recommendation on various grounds, none concerned her failure to rule upon these alleged claims.[4] Since Woodard did not present these claims in his previous petition, the court will not consider them in this motion for reconsideration,[5] *see Johnson*, 50 Fed. Appx. at 560, and accordingly will not disturb its October 4, 2005 Order dismissing Woodard's second federal habeas petition.

B. 28 U.S.C. § 2241

Woodard's motion also states that he seeks relief pursuant to 28 U.S.C. § 2241. However, even if I consider his motion as a third federal habeas corpus petition, rather than merely seeking reconsideration of the court's previous decision, his filing must be dismissed as

---

[4] Woodard's numbered arguments were titled: 1) "the PCRA court's treatment of petitioner's . . . Post Conviction Hearing Act petition is procedurally flawed"; 2) "petitioner's amended post conviction petitions were not serial post conviction petitions independently subject to the Post Conviction Relief Act's . . . one-year time limit, as it repeatedly amended a timely petition"; 3) "when considering claims for post conviction relief, federal courts need not defer to the state judicial process when there is no appropriate remedy at the state level or when the state process would frustrate the use of an available remedy."

[5] Indeed, if Woodard had properly presented these arguments in his second petition, the court would have been compelled to dismiss the petition because it would have been both time-barred, as was his first petition, and an unauthorized successive habeas petition, as described in part II.B. of this opinion. The court found it unnecessary to reach these decisions in its prior opinion because it found that Woodard had not presented claims that were cognizable on federal habeas review.

an unauthorized 28 U.S.C. § 2254 petition.

Section 2241 provides jurisdiction to district courts to issue writs of habeas corpus in response to a petition from a state or federal prisoner who "is in custody in violation of the Constitution or laws or treaties of the United States." Section 2254 provides jurisdiction to district courts to issue "writs of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court . . . on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." However, Congress has restricted the availability of second and successive § 2554 petitions through § 2244(b). Allowing Woodard to file the instant motion in federal court as a petition pursuant to § 2241 attacking his state court conviction without reliance on § 2254 would circumvent this restriction and thwart Congressional intent. Thus, "[a] prisoner challenging either the validity or execution of his state court sentence must rely on the more specific provisions of § 2254 and may not proceed under § 2241." *DeVaughn v. Dodrill*, 145 Fed. Appx. 392, 394 (3d Cir. 2005) (citing *Coady v. Vaughn*, 251 F.3d 480, 485 (3d Cir. 2001)). Because Woodard seeks to challenge the validity of his state court sentence, to the extent that it could be considered a habeas petition, the court will construe Woodard's filing as a 28 U.S.C. § 2254 petition.

28 U.S.C. § 2244(b)(3)(A) requires that "[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." Woodard filed an initial § 2254 petition on November 18, 2002, which was long-ago resolved, and now brings this petition without authorization from the Third Circuit. In order for Woodard's first petition to "count" and render any subsequent petition successive, it must have been adjudicated

on the merits. *See Slack v. McDaniel*, 529 U.S. 473, 485-486 (2000) (stating that "[a] habeas petition filed in the district court after an initial habeas petition was unadjudicated on its merits and dismissed for failure to exhaust state remedies is not a second or successive petition"). A petition that is dismissed as time-barred, as was Woodard's November 18, 2002 petition, has been adjudicated on the merits. *See Murray v. Greiner*, 394 F.3d 78, 81 (2d Cir. 2005) ("Because the dismissal of a prior § 2255 petition as tardy under the controlling statute of limitations presents a 'permanent and incurable' bar to review of the claim, we concluded that such a dismissal constitutes an adjudication on the merits and subjects future challenges filed by the petitioner under § 2255 to the gatekeeping requirements of § 2244(b)(3)."); *Altman v. Benik*, 337 F.3d 764, 766 (7th Cir. 2003) (stating that "a prior untimely petition does count because a statute of limitations bar is not a curable technical or procedural deficiency but rather operates as an irremediable defect barring consideration of the petitioner's substantive claims"); *Rogers v. Carroll*, 2005 WL 2122119, at *1 (D. Del. Aug. 31, 2005); *Scott v. Klem*, 2005 WL 1653165, at *2 (M.D. Pa. July 12, 2005); *United States vs. Harris*, 2002 WL 31859440, *3 (E.D. Pa. Dec. 20, 2002); *Champion v. Shannon*, 2004 WL 1945550, at *3 (E.D. Pa. Aug. 31, 2004) (stating that "[i]f the Third Circuit were to authorize this Court's review of Petitioner's successive habeas petition, unless Petitioner can adduce new evidence to overcome the time-bar previously found, this court would, again, dismiss his petition in a circular, futile process); *see also Plaut v. Spendthrift Farm*, 514 U.S. 211, 228 (1995) ("The rules of finality, both statutory and judge made, treat a dismissal on statute-of-limitations grounds the same way they treat a dismissal for failure to state a claim, for failure to prove substantive liability, or for failure to prosecute: as a judgment on the merits."). Accordingly, Woodard's new petition (if it is such) is a second or

successive application within the meaning of 28 U.S.C. § 2244, which the Third Circuit has not authorized. Thus, the court will dismiss the petition.

When a district court issues a final order denying a § 2254 petition, the court must also decide whether to issue a certificate of appealability. *See* Third Circuit Local Appellate Rule 22.2. The court may issue a certificate of appealability only if the defendant "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Where a district court rejects a habeas petition on procedural grounds, to satisfy § 2253(c) the petitioner must demonstrate that "jurists of reason" would find it debatable: (1) whether the petition states a valid claim of the denial of a constitutional right, and (2) whether the court was correct in its procedural ruling. *Slack v. McDaniel*, 529 U.S. 473, 484 (U.S. 2000). Here, the court has analyzed Woodard's claims and denied them. I am persuaded that reasonable jurists would not find this assessment debatable or wrong. Therefore, Woodard has failed to make a substantial showing of the denial of a constitutional right, and a certificate of appealability will not issue.

An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROBERT L. WOODARD,	:	
	:	CIVIL ACTION
v.	:	
	:	NO. 05-1109
DAVID DIGUGLIELMO, et. al.,	:	
	:	

Order

AND NOW, this _____ day of February, 2006, upon consideration of defendant Robert Woodard's Motion for Reconsideration (Doc. No. 8), IT IS HEREBY ORDERED that:

1. Woodard's Motion for Reconsideration is DENIED and DISMISSED,

2. The petitioner having failed to make a substantial showing of the denial of a constitutional right, there is no ground to issue a certificate of appealability, *see* 28 U.S.C. § 2253(c); and

3. The petitioner's application for an evidentiary hearing is denied as moot.

s\ William H. Yohn, Jr., Judge

_____

William H. Yohn, Jr., Judge